

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

STATES OF NEW YORK,
MASSACHUSETTS,
WASHINGTON, COLORADO,
CONNECTICUT, DELAWARE,
DISTRICT OF COLUMBIA,
HAWAII, ILLINOIS, IOWA, NEW
MEXICO, NORTH CAROLINA,
OREGON, PENNSYLVANIA,
RHODE ISLAND, VERMONT, and
VIRGINIA,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; ELAINE C. DUKE, in her official capacity; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; and the UNITED STATES OF AMERICA,

Defendants.

CIVIL ACTION NO. 1:17-cv-05228
(NGG) (JO)

**PLAINTIFF STATES' NOTICE
OF MOTION FOR A
PRELIMINARY INJUNCTION**

TO DEFENDANTS DONALD TRUMP, in his official capacity as President of the United States, U.S. DEPARTMENT OF HOMELAND SECURITY; ELAINE C. DUKE, in her official capacity; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; and the UNITED STATES OF AMERICA, COLLECTIVELY “DEFENDANTS,” AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, based upon the attached Memorandum of Law in Support of Plaintiff States' Motion for a Preliminary Injunction, Plaintiff States move to preliminarily enjoin Defendants from executing the September 5, 2017 memorandum which terminates the Deferred Action for Childhood Arrivals ("DACA") program ("the termination"). Plaintiff States will demonstrate, both in the attached Memorandum of Law and on January 18, 2018—the hearing date set for this motion—that (1) they are likely to succeed on the merits of their claims under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A), the Regulatory Flexibility Act ("RFA"), 5 U.S.C. §§ 601-612, and the equal protection guarantee of the United States Constitution; (2) the termination will cause irreparable harm to Plaintiff States; and (3) the public interest and the balance of the equities weigh in favor of preliminary relief in the form of a return to the status quo which existed prior to the Termination.

Plaintiff States note that the Court ordered Defendants to complete the administrative record (ECF. NO. 65). Defendants' compliance with that ruling has been stayed by the Second Circuit,¹ and Defendants' petition for mandamus relief is also pending before the Second Circuit. Nevertheless, as provided in this Court's scheduling order (ECF. NO. 46) and due to the immediacy caused by Defendants' arbitrary and capricious decision to terminate DACA by March 5, 2018, Plaintiff States currently move for preliminary relief on an incomplete administrative record, the discovery obtained prior to the Second Circuit's stay, and the exhibits and declarations submitted in connection with this motion. Plaintiff States will supplement this motion upon completion of the administrative record or if further discovery uncovers relevant information.

¹ Discovery has also been stayed by the United States Supreme Court in other cases challenging DACA before the U.S. district court in the Northern District of California. See *Regents of Univ. of California v. DHS*, No. 17-cv-05211 (N.D. Cal. filed Sept. 8, 2017); *State of California v. DHS*, No. 17-cv-05235 (N.D. Cal. filed Sept. 11, 2017); *City of San Jose v. Trump*, No. 17-cv-05329 (N.D. Cal. filed Sept. 14, 2017); *Garcia v. United States of America*, No 17-cv-05380 (N.D. Cal. filed Sept. 18, 2017); *County of Santa Clara v. Trump*, No. 17-cv-05813 (N.D. Cal. filed Oct. 10, 2017).

Plaintiff States' Memorandum of Law, based on the current record, demonstrates that Plaintiff States are likely to succeed on the merits of their claims that the termination was arbitrary and capricious and an abuse of discretion, in violation of the APA, the RFA, and the equal protection guarantee of the United States Constitution. Plaintiff States seek preliminary injunctive relief at this time.

DATED: New York, New York
December 15, 2017

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